

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

STEPHEN O. GETHANGE,	:	
	:	
Petitioner,	:	Civ. No. 20-713 (GC)
	:	
v.	:	
	:	
ATTORNEY GENERAL FOR THE	:	<b>MEMORANDUM &amp; ORDER</b>
STATE OF NEW JERSEY,	:	
	:	
Respondent.	:	

**CASTNER, U.S.D.J.**

Petitioner, Stephen O. Gethange (“Petitioner” or “Gethange”), is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 5, 2020, the Court ordered Respondent to file either a motion to dismiss due to untimeliness, or a full response to Petitioner’s habeas petition, within forty-five days. (*See* ECF 5). On March 12, 2020, the Office of the Attorney General for the State of New Jersey referred this matter to the Middlesex County Prosecutor’s Office to respond to the Court’s Order as it was the office that prosecuted Petitioner. Respondent though did not file either a motion to dismiss or response to the habeas petition within the time allotted by the Court.

On April 11, 2022, this matter was reassigned to the undersigned. (*See* ECF 9). Because the Court’s initial Order for a response to the habeas petition was never responded to by Respondent, this Court contacted the Middlesex County Prosecutor’s Office in mid-April, 2022, to find out the status of its response to Petitioner’s habeas petition. On April 21, 2022, the Middlesex County Prosecutor’s Office indicated it had inadvertently failed to file a response to

Petitioner's habeas petition. (*See* ECF 10). On April 27, 2022, this Court gave Respondent until May 13, 2022 to file a response to Petitioner's habeas petition. (*See* ECF 11).

On May 13, 2022, Respondent filed a Motion to Dismiss Petitioner's habeas petition due to untimeliness. (*See* ECF 12 & 13). This filing was plainly appropriate given the previous instructions to Respondent from the Court that it could file a motion to dismiss on timeliness grounds in lieu of a full response to the habeas petition.

On June 23, 2022, Petitioner filed a Motion for Summary Judgment. (*See* ECF 14). Petitioner argues that Respondent failed to comply with this Court's April 27, 2022 Order to file a response to his habeas petition.

Petitioner's Motion for Summary Judgment will be denied. As indicated above, Respondent filed a Motion to Dismiss Petitioner's habeas petition due to untimeliness within the time allotted by this Court pursuant to the April 27, 2022 Order. However, it is not clear based on Petitioner's Motion for Summary Judgment, as well as Respondent's failure to include a certificate of service on Petitioner within its Motion to Dismiss, whether Respondent properly served its Motion on Petitioner. Thus, Respondent shall be ordered to file a certificate of service with this Court indicating that service of its Motion to Dismiss (along with the corresponding exhibits) was properly served on Petitioner.

Accordingly, IT IS on this 23<sup>rd</sup> day of August, 2022,


ORDERED that Petitioner's Motion for Summary Judgment (ECF 14) is denied; and it is further

ORDERED that Respondent shall file a certificate of service of its Motion to Dismiss and accompanying exhibits on Petitioner within seven (7) days of the date of this Memorandum and Order; and it is further

ORDERED that Petitioner shall have forty-five (45) days from the date the certificate of service is filed with this Court in which to file a response to Respondent's Motion to Dismiss; and it is further

ORDERED that if Petitioner files a response in opposition to the Motion to Dismiss, Respondent shall have ten (10) days in which to file a reply; and it is further

ORDERED that the Clerk shall serve this Memorandum and Order on Petitioner by regular U.S. mail.

  
GEORGETTE CASTNER  
United States District Judge